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RR RUEHCHI RUEHDT RUEHHM RUEHNH
DE RUEHPF #0497/01 1981012
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FM AMEMBASSY PHNOM PENH
TO RUEHC/SECSTATE WASHDC 0955
INFO RUCNASE/ASEAN MEMBER COLLECTIVE

UNCLAS SECTION 01 OF 02 PHNOM PENH 000497

SENSITIVE
SIPDIS

STATE FOR EAP/MLS, P, D, DRL, S/WCI

E.O. 12958: N/A

TAGS: PGOV PHUM KJUS PREL EAID CB

SUBJECT: Khmer Rouge Tribunal: The Trial of S-21
Interrogation Center Head Kaing Guek Eav, Week 12

REF: PHNOM PENH 472 AND PREVIOUS

¶1. (SBU) SUMMARY: Embassy staff routinely observes the proceedings of the trial against the notorious Khmer Rouge torture center head, widely known as Duch, at the Extraordinary Chambers in the Courts of Cambodia (ECCC) (Reftel). This report summarizes the twelfth week of activities inside the court at the Khmer Rouge Tribunal. More technical accounts of the proceedings can be found at: www.csd cambodia.org; www.kid cambodia.org and at <http://socrates.berkeley.edu/~warcrime/>. END SUMMARY.

¶2. (SBU) The court seemed unprepared to handle issues of self-incrimination this week, and translation continued to be a problem. The majority of the week was dedicated to questioning witnesses who were staff members at S-21. This was a marked change from last week's emotional and at times confusing testimony by civil parties. Civil parties appear at the trial upon the request of their lawyers, are not required to take an oath, and are eligible for moral reparations. Witnesses, however, are summoned by the Chamber to testify and must take an oath before appearing in court. The Witness and Expert Support Unit (WESU) provides support to witnesses to prepare them and ensure their safety, however it appeared that legal representation and protection specifically for perpetrator witnesses has been overlooked. On two occasions this week, perpetrator witnesses entered the courtroom without having a lawyer present, and seemingly without having had the opportunity to discuss their testimony in detail with a lawyer prior to arriving at court. After lengthy and often heated debates on the right against self-incrimination and Joint Criminal Enterprise (JCE), witness testimony was postponed both Monday and Wednesday in order for the perpetrator witnesses to meet with a court appointed lawyer and be adequately advised of his rights. The prosecution informed co-investigating judges that it would not prosecute the perpetrator witnesses who were in court this week. However, this representation only protects them from prosecution at the ECCC - they could still face prosecution in a national court. Because of this, and possibly due to age, insufficient memory, or emotional denial, one perpetrator witness, Mam Nai, declined to answer many of the questions posed to him by the court.

¶3. (SBU) Herewith are observation notes from the testimony of Mam Nai on July 15, 2009:

In contrast to previous weeks, the civil party gallery was full. The audience was also close to capacity. Three to four busloads of people came from Kampong Cham to view the proceedings. There were also many foreigners and two monks in the audience.

The first part of the day went by slowly. Mam Nai, a 76-year-old former interrogator at S-21, had to be reminded on several occasions to wait for the red light on his microphone before speaking. The translator seemed to miss portions of the questioning by the international co-prosecutor and especially had difficulty with numbers. This became quite tedious as the prosecution as well as the civil party lawyers requested countless documents to be shown on screen, and each document had a long serial number attached to it which must be read out. The audio-visual unit was slow to produce

the requested material on screen, possibly due to errors in translation. These delays are significant in that the prosecution and defense are only allotted one hour each for questioning, with civil party lawyers limited to twenty minutes per group.

During the course of the day, Mam Nai refused to answer many of the questions and seemed to have a case of selective memory for those he did answer. He was asked repeatedly by the prosecution as well as civil party lawyers about Professor Phung Thon, whose wife and daughter were in the civil party gallery and whose confession was signed by the witness. Mam Nai, however, maintained he did not use torture in his interrogation sessions and had no idea of what happened after the accused parties left his room. When asked if he regretted his role in S-21, he stated that he had some regrets, but only for the "small group of good people who died, but I have never been regretful for all the bad people who were killed." This and his response that he had no knowledge of how many people died at S-21 or under the Khmer Rouge regime elicited gasps of astonishment from the audience. It was at this point that the International Defense Counsel, Francois Roux, sarcastically thanked the prosecution for calling the witness and said if the prosecution had any further witnesses like this one they should not hesitate to call them.

It has become customary at the tribunal for Duch to make observations at the end of the questioning of civil parties and witnesses. Today, he used his time to stand up and chastise Mam Nai for worrying about himself and failing to tell the truth. Accented with hand gestures and much finger pointing, Duch lectured Mam Nai to take responsibility and "tell the truth! You cannot use a basket to cover a dead elephant." When the cameras turned to Mam Nai, he appeared to be smiling during Duch's outburst, causing a buzz among

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the audience. However, when given the chance to speak again, Mam Nai broke down in tears and stated he was "remorseful."

Throughout the day, Roux and international co-prosecutor William Smith seemed particularly combative toward one another. After going back and forth about the JCE and self-incrimination for the third time in one day, Judge Nil Non finally told them to not bring it up in public again, stating that if they continued to do so, witnesses will invoke silence more often and it will be more difficult for the Chamber to get to the truth. When the second witness of the day, Him Huy, was called, Judge Non made sure he was aware of his rights and then asked if he required counsel prior to the proceedings. When Him Huy stated he would like counsel, Judge Non stated that a lawyer would be appointed to provide him guidance and adjourned the trial early. (COMMENT: Given that the same situation occurred on Monday, it is surprising that the WESU did not think to inquire whether the second scheduled witness would want to consult a lawyer as well and arrange it in advance of today's proceedings. END COMMENT.)

Rodley